

Comments on MD SB 222 (After Senate Amendments): An Act Concerning Environment, Reducing Packaging Materials, and Producer Responsibility

The bill pending would result in fees levied on producers of packaged goods to provide recycling funding to the counties and Baltimore City with no requirement for them to improve recycling rates or services. Additionally, the bill lacks a workable provision whereby collected material would be available to the funding producers in order to meet standards to use recycled content in their packaging.

Four states have passed EPR legislation. None have been fully implemented. The program described in this legislation would be unlike other extended producer responsibility (EPR) programs around the world and does not align with best practices for EPR developed by the beverage industry and other organizations. **The comments below provide a high-level summary of some of the areas in which the bill diverges from best practices, making it much less likely to achieve its goals.**

Program Scope

- **Limited to “packaging materials”** – the bill only targets packaging materials, which comprise only a portion of the material recycled in local communities. Printed papers (catalogues, junk mail, magazines, newspapers) comprise a significant share of what is in curbside carts and other municipal recycling systems and should be part of this program. (9-2501)
- **Covered services are inadequately defined** – the bill needs to align definitions for services provided and those eligible for producer funding; the bill’s scope and language are unclear and inconsistent in places. One specific concern is a reference to “converting” packaging material in 9-2504(E)(1)(II)(4), which is outside the scope of typical EPR programs.
- **Producer definition remains awkward** –the bill continues to include references to “producers of packaging material” instead of simply producers, which makes this definition still problematic in places. (9-2503)

State vs. Producer Responsibilities

- **Goals:** While the PRO is required to include many goals in its plan (see below), the Department is given authority for setting them (9-2504(D)). This is not a best practice and conflicts with the plan requirements in subsection (C): instead, producers should propose goals in the plan (in many fewer categories than in the bill) and the state would then review and approve them as part of plan review.
- **Cost reimbursement:** the bill provides for excessive state intrusion into this critical area. The state can establish cost factors driving reimbursements reflecting “any socioeconomic or geographic factor.” (9-2504(E)(2)(I)(4)) This could permit the state to, for example, require a large premium on reimbursements to counties below a certain income level. Reimbursement for reasonable costs should remain the underlying principle that governs this component of the program.
- **Fee schedule public notice:** 9-2504(E)(3) requires public notice of its fee schedule, which does not make sense. The fee schedule is proposed as part of the plan, subject to Advisory Council and Department review after it has been approved by the producers that fund it. There is no need or role for public comment as fees are published annually and widely available.

Goals

- **The waste reduction goal is extreme and should not be included:** SB 222 requires producers to achieve a 25% reduction in each type of packaging material waste in five years. This would require significant increases in recycling rates for every material, where neither the current rates or the potential for increasing them are known. An arbitrary goal serves no purpose; fact-based goals (see below) should steer the program.
- **Goals should be proposed in the plan, based on the needs assessment,** and focus on a more practical list of parameters than those included in 9-2504(C)(3). These include collection rates (picked up from households and public spaces and delivered to MRFs or similar facilities), recovery rates (material sold by MRFs or similar entities to end markets), and contamination rates (the difference between the other two). The PRO should also propose minimum recycled content requirements for materials collected under the program.
- **Other goals are outside the control of a packaging PRO:** 9-2504(C)(3) also requires producers to develop goals for reuse, greenhouse gas reduction, and organics recycling. The ability of these producers to impact composting rates is negligible because so much of the organics stream is material other than packaging. Reuse and GHG impacts derive from individual producer decisions and the actions of service providers like haulers and municipalities over which the PRO has limited influence; these fall outside the range of appropriate goals to which a PRO should be held.

Program Effectiveness

- **Partial reimbursement limits effectiveness:** We already noted that the scope of the law leaves out a critical component of recycling carts – printed paper – so the costs of recycling that material would not be covered by producers. Then the bill limits reimbursement to 50% of collection costs (9-2504(E)), leaving local government responsible for at least half the cost of recycling. Limited funding means limited control, lack of improvement in the system, and failure to meet goals.
- **Lack of standards for municipal recycling:** Uniform standards coupled with adequate reimbursement will drive better performance. Standards include requiring recycling access for all households, development of a statewide recyclables list (part of the needs assessment), and requirements for parallel access (the same as disposal). If those requirements are tied to the reimbursement, then producers can affect and fund the necessary changes to meet goals. This bill lacks service standards for municipalities and emphasizes instead maintenance of the *status quo*. Following this approach will not lead to a better performing system, the PRO will not achieve its goals, and producers will function as little more than an ATM used to fund the current system.
- **Promoting circularity:** Section 2 of the bill is a nod to circularity but poses significant legal issues with interstate commerce. We recommend the plan include the following in 9-2504(C):

“Describe how the Organization will provide producers with the opportunity to purchase post-consumer recycled materials from processors at market prices if the producer is interested in obtaining recycled feedstock to achieve minimum post-consumer recycled content rates.”

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What We Support

We believe that **good data precedes good policy** and that is the first best step to determining how Maryland develops an EPR system or other recycling policies that will have measurable outcomes and make recycling equitable and easy for all Marylanders regardless of where they live.

We support a study that will provide important data and information around the current county and municipal infrastructure, full cycle costs, the current processing of recyclables, and commodities being recycled. This is the first best step to bring good comprehensive EPR to Maryland.